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The City of Vadnais Heights
 800 East County Road E
 Vadnais Heights, MN 55127

Memorandum:

TO: Mayor Krachmer and City Council Members

FROM: Nolan Wall, Planning/Community Development Director

DATE: February 7, 2023

SUBJECT: Request for Council Action
 Loan Administrator Agreement with Community Neighborhood Housing Services

Recommended Council Action

Staff recommends approval of the attached Loan Administrator Agreement with Community Neighborhood Housing Services.

Background

City Council will be receiving an update from NeighborWorks Home Partners (Community Neighborhood Housing Services) on the proposed home improvement loan program guidelines at the February 7 workshop. The goal is to finalize the program requirements and market the program starting in March. The proposed agreement authorizes administration services to implement, manage, and market the program and is necessary due to staffing limitations; similar services are provided to several metro area communities.

Action Requested

Staff recommends approval of the attached Loan Administrator Agreement with Community Neighborhood Housing Services.

This matter requires a simple majority vote.

Attachment(s):

- Agreement

LOAN ADMINISTRATOR AGREEMENT

THIS LOAN ADMINSTRATOR AGREEMENT (the “Agreement”) is entered into the _____ day of _____, 202__, by and between the **CITY OF VADNAIS HEIGHTS**, a Minnesota municipal corporation (the “City”), and **COMMUNITY NEIGHBORHOOD HOUSING SERVICES**, a Minnesota non-profit corporation d/b/a **NEIGHBORWORKS HOME PARTNERS** (“Consultant”).

RECITALS

A. The Consultant has agreed to provide certain Services (as defined below) in connection with the City’s housing programs.

B. The City desires to hire the Consultant to render this technical, professional, and marketing assistance in connection with housing programs of the City for the term as set forth in this Agreement.

C. Consultant is willing to provide such services on the terms and conditions set forth herein.

In consideration of the foregoing recitals and following terms, conditions and mutual promises contained herein, the parties agree as follows:

1. **Scope of Services.** The Consultant shall provide services as follows (the “Services”):

- a. Administer the City’s housing rehabilitation programs by:
 - i. Providing information to residents about the programs, upon request;
 - ii. Receiving and receipting loan applications;
 - iii. Processing, evaluating and underwriting loan applications;
 - iv. Closing loans or coordinating loan closings of qualified applicants with a title company in accordance with the applicable program;
 - v. Overseeing the draw process for the funds, including, as necessary, reviewing draws, reviewing the progress of the work and collecting lien waivers and certificates of occupancy. Consultant may, for this purpose, rely on third-party representations and certifications;
 - vi. Providing regular reports about the number of loans closed, demographic information of borrowers, pending loans and general application activity; and
 - vii. Coordinating the post-close components of the loan transactions with the City’s loan servicer.
- b. Assist City residents considering housing rehabilitation, including phone consultations and property visits, suggesting alternatives for rehabilitation to homeowners, educating homeowners on the construction bid process, assisting homeowners with evaluating bids and work completed and construction progress.

- c. Provide referral and other support for City residents wishing to pursue financing via the Minnesota Housing Finance Agency home rehabilitation programs.
- d. Serve as a housing resource to City residents upon request, including provision of information and/or referrals regarding emergency assistance, housing rehabilitation and first time homebuyer options.

2. **Term.** This Agreement shall be in full force and effect from the date of execution and shall continue through December 31, 2023, unless otherwise terminated as set forth below. In addition, should both parties agree the terms and conditions of this agreement may be extended annually by written acknowledgement signed by both parties on or before November 30 of the year in which the contract is set to expire.

3. **Compensation.**

a. **Loan Administration.**

i. **Compensation and Reimbursement.** For Services provided under this Agreement, the City shall pay to the Consultant the following, charged on a monthly basis:

a. **Administration Fee.** The City shall pay to the Consultant, in consideration for the Services, an amount equal to ten percent (10%) of the Loan Amount (defined below) for each loan closed through the City home rehabilitation program (each “Loan”) in the prior month (the “Administration Fee”).

b. **Reimbursement of Advances.** The City shall also reimburse the Consultant for the total loan capital amount (the “Loan Amount”) of each closed Loan advanced by the Consultant in the prior month.

ii. **Billing and Payment.** Billing and payments shall be handled as follows:

a. The Consultant will send to the City, within fifteen (15) days following the close of each month, the following:

- 1. An invoice that separately itemizes each Loan closed in the prior month, identifying the property or borrower and closing date, as well as the Loan Amount and the applicable Administration Fee; and
- 2. A copy of the signed Promissory Note and Mortgage for each Loan closed in the Prior month.

b. The City will pay the Consultant in full within thirty (30) days of the City’s receipt of an invoice and all corresponding Promissory Notes and Mortgages.

4. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:

- a. The parties, by mutual written agreement, may terminate this Agreement at any time. Upon termination of this agreement there shall be no other compensation paid to Consultant for work in progress or services performed, except the City shall reimburse the Consultant pursuant to subsection 3.a.i.b of this Agreement for the total Loan Amounts advanced prior to the termination.
- b. City may terminate this Agreement upon the breach by Consultant of any of its material covenants contained herein, where such breach shall have continued for a period of thirty (30) days following the receipt by Consultant of a written notice from City, specifying the alleged breach; provided, however, if the nature of a non-monetary breach is such that Consultant cannot reasonably cure same in the thirty (30) day period, Consultant shall not be deemed to be in breach if it commences to cure within the thirty (30) day period, and diligently pursues same to completion within ninety (90) days following receipt by Consultant of such written notice. In the event of termination by City hereunder, Consultant shall be entitled to Administration Fees and reimbursement of Loan Amounts advanced by the Consultant for Loans that closed prior to the date the notice of breach is sent by the City.
- c. If Consultant or City (as applicable) (i) files a voluntary petition in bankruptcy (ii) files a voluntary petition for reorganization under any bankruptcy law, statute or regulation or other similar statute or regulation, (iii) is adjudicated as bankrupt, (iv) makes an assignment for the benefit of creditors or applies for or consents to the appointment of a receiver or trustee as part of or in conjunction with a “creditor plan” with respect to any substantial part of its assets, or (v) a receiver or trustee is appointed, or an attachment or execution levied with respect to any substantial part of its assets, and said appointment is not vacated, or the attachment or execution not released, within sixty (60) days, then this Agreement shall, effective as of such date, without notice or further action by either party, immediately terminate.
- d. Consultant may terminate this Agreement upon the breach by City of any of its material covenants contained herein, where such breach shall have continued for a period of thirty (30) days following the receipt by City of a written notice from Consultant, specifying the alleged breach; provided, however, if the nature of a non-monetary breach is such that City cannot reasonably cure same in the thirty (30) day period, City shall not be deemed to be in breach if it commences to cure within the thirty (30) day period, and diligently pursues same to completion within ninety (90) days following receipt by City of such written notice. In the event of termination by Consultant hereunder, Consultant shall be entitled to retain the entire fee under this Agreement.

5. **Insurance.**

- a. During the term of this Agreement, the Consultant shall obtain and maintain workers compensation, comprehensive general liability, and automobile liability

insurance. Comprehensive general liability insurance shall have an aggregate limit of Two Million Dollars (\$2,000,000.00).

- b. Upon request by the City, the Consultant shall provide a certificate or certificates of insurance relating to the insurance required. Such insurance secured by the Consultant shall be issued by insurance companies licensed in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess.
- c. Such insurance shall be in force on the date of execution of an Agreement and shall remain continuously in force for the duration of the Agreement.

6. **Indemnification.**

- a. Notwithstanding anything to the contrary in this Agreement, the City, its officers, agents, and employees shall not be liable or responsible in any manner to the Consultant, the Consultant's successors or assigns, the Consultant's subcontractors, or to any other person or persons for any third party claim, demand, damage, or cause of action of any kind, nature, or character, including intentional acts, arising out of or by reason of the performance of this Agreement by Consultant. The Consultant, and the Consultant's successors or assigns, agree to indemnify, defend and save the City, and its officers, agents, and employees, harmless from all third party claims, demands, damages, and causes of action, to the extent caused by the negligence or wrongful acts of Consultant, and the costs, disbursements, and expenses of defending the same, including but not limited to, attorney's fees, consulting services, and other technical, administrative or professional assistance.
- b. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466, or otherwise.

7. **Assignment.** This Agreement shall not be assigned, sublet, or transferred, in whole or in part without the prior written approval of the City.

8. **Conflict of Interest.** The Consultant shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict, the Consultant, with the prior written consent of the City, shall arrange for suitable alternative services.

9. **Compliance with Laws.** The Consultant shall comply with all applicable Federal, State, and local laws, rules, ordinances, and regulations at all times and in the performance of the services pursuant to this Agreement.

10. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

Consultant: NeighborWorks Home Partners
533 Dale Street North
St. Paul, MN 55103

City: City of Vadnais Heights
800 Co Rd E East
Vadnais Heights, MN 55127

Or such other address as either party may provide to the other by notice given in accordance with this provision.

11. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and the Consultant, and supersedes any other written or oral agreements between the City and the Consultant. This Agreement can only be modified in writing signed by the City and the Consultant.

12. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.

13. **Counterparts.** This Agreement may be signed in one or more counterparts but all of which taken together shall constitute one instrument.

14. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

15. **Data Practices Act Compliance.** Data provided to the Consultant or created by the Consultant under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended.

16. **Agreement Not Exclusive.** The City retains the right to hire other housing program consultants, in the City's sole discretion.

17. **Records – Availability and Retention.** The Consultant agrees that the City or any of their duly authorized representatives at any time during the normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Consultant and invoice transactions relating to this Agreement. Consultant agrees to maintain these records for a period of three (3) years from the date of termination of this Agreement. The City can, at the City's expense obtain copies of any of the Consultant's records relevant to this Agreement.

18. **Nondiscrimination**. During the performance of this Agreement, the Consultant agrees to the following:

No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective dates indicated below.

CITY:

CITY OF VADNAIS HEIGHTS

By: _____

Its: Mayor

Date: _____, 202__.

By: _____

Its: City Administrator

Date: _____, 202__.

CONSULTANT:

COMMUNITY NEIGHBORHOOD HOUSING SERVICES D/B/A
NEIGHBORWORKS HOME PARTNERS

By: _____

Its: Executive Director

Date: _____, 202__.